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COMMITTEE AGAINST TORTURE

Twenty-fifth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 450th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 21 November 2000, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.450/Add.1.

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Third periodic report of Guatemala (CAT/C/49/Add.2)

1. At the invitation of the Chairman, the delegation of Guatemala took places at the Committee table.

2. The CHAIRMAN invited the Guatemalan delegation to introduce the third periodic report of Guatemala.

3. Mr. GODOY MORALES (Guatemala) said that the signing of the Agreement on a Firm and Lasting Peace in 1996 had marked the start of a reform of the State that aimed to put an end to impunity, establish a genuine rule of law and strengthen civil authority. From the beginning of its term of office, the current Government had therefore prioritized reform of the judicial system, professionalization of the forces of law and order, preparation of an anti-crime policy and recognition of the State's institutional liability in cases of human rights violations.

4. It was clear from the reports of the United Nations Human Rights Verification Mission in Guatemala (MINUGUA) and the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH) that torture occurred most frequently among the forces of law and order, and the major challenges for the State were the strengthening and professionalization of the National Civil Police, the introduction of technical methods into criminal investigations and the restructuring of the penitentiary system, particularly with regard to regulations and prison staff training.

5. Despite its lack of resources, the penitentiary system was making efforts to improve. A course had been organized for 60 new prison guards by the Office of the Director-General of the Penitentiary System, as part of the MINUGUA project on the improvement of the penitentiary system: the course syllabus included subjects such as ethics and the human rights of persons deprived of their liberty; the Code of Conduct for Law Enforcement Officials; the prevention and control of torture; International Committee of the Red Cross (ICRC) monitoring of detention centres; and security and social rehabilitation programmes.

6. As for the police, he said an evaluation of the Police Academy curriculum had been carried out and 800 National Civil Police officers had taken a basic course on the Code of Conduct for Law Enforcement Officials and the Convention against Torture. Thirty-six human rights instructors had also been trained on a special course.

7. Another problem that required urgent attention was that of lynchings, which continued to occur in rural areas. An education campaign aimed at children, to instil ethical and civic values and respect for the right to life and personal integrity, had been launched by the Office for the Modernization of the Judiciary and backed up by information on radio and television in indigenous languages and Spanish. The Office had also organized workshops for local authorities and community leaders in a number of the departments most affected by the problem.

8. Various measures had been taken to promote institutional change and adopt a coordinated approach to specific problems. For example, prevention of abuses and arbitrary or illegal action on the part of the forces of law and order had been incorporated into public safety policy by expanding the Office for Security (Gabinete de Seguridad) into an Office for Public Security and Human Rights, including not only the Ministries of the Interior, Foreign Affairs and Defence, but also the Strategic Analysis Secretariat and COPREDEH.

9. In addition, COPREDEH, with its special experience with the Inter-American Commission on Human Rights and the United Nations treaty-monitoring bodies, had been included in the national commission responsible for judicial reform and for implementing the recommendations of the Special Rapporteur on the independence of judges and lawyers, who had recently visited Guatemala (Comisión Nacional de Apoyo y Seguimiento para el Fortalecimiento de Justicia).

10. Recently, human rights organizations and community leaders had been subject to threats, a complaint that traditionally had not been investigated in Guatemala. An ad hoc working group including representatives of the judiciary, the Public Prosecutor's Office, the Ministry of the Interior, the National Civil Police, the Ministry Of Defence, the Strategic Analysis Secretariat and COPREDEH, had been set up to look into such threats and intimidation, initiate investigations and punish those responsible.

11. One of the most important steps the Government had taken was to recognize its institutional liability for 49 of the 230 cases currently before the Inter-American Commission on Human Rights. In the remaining cases, the Government had agreed to seek amicable settlement with the victims and their representatives. COPREDEH was working towards settlement in some 50 of those cases, including cases of forced disappearance and extrajudicial killings, and cases involving street children. The terms of such settlements would include proceeding with investigations and trials, honouring the memory of the victims and financial reparation.

12. Lastly, he said the emphasis in the future would be on an awareness-raising campaign aimed at those involved in the system and the public at large, since the main problem was to make Guatemalans understand that the appalling crimes committed during the armed conflict should be punished.

13. Mr. GONZALEZ POBLETE (Country Rapporteur) said that the period covered by the report had seen some encouraging developments, including the first elections since the signing of the Peace Accords, which had been one more step towards democracy and the consolidation of the rule of law. It was also a welcome sign that Guatemala's report was being presented by the President of COPREDEH.

14. Although in formal terms the report complied with the Committee's guidelines, in its discussion of certain articles it did no more than repeat information already provided in previous reports. He suggested that, in the interests of simplicity, the State party should in future merely note, where applicable, that there had been no change since the previous report. In that regard, he said that, since the State party had already demonstrated that its Constitution, Penal Code and Code of Criminal Procedure complied with the provisions of articles 2.2, 2.3, 5, 6 and 7 of the Convention, he would not be discussing those articles.

15. With regard to article 3 (report, paras. 20-27), he noted that the Constitution granted the right of asylum in accordance with international practice. However, it appeared that only persons with refugee status were protected from expulsion or extradition, and he wondered what provision was made in other cases: if non-refugees were unable to invoke article 3.1 of the Convention, they might run the risk of torture.

16. In theory, under the Constitution, article 46, the Convention should take precedence over domestic law. However, there was some uncertainty about the force of article 46. For example, Guatemala was a party to the Inter-American Convention on H' man Rights, which stipulated that the death penalty could not be extended to crimes other than those already punishable by death at the time the State party acceded to the Convention. Yet the Supreme Court had recently upheld a number of death sentences for abduction, despite the fact that at the time Guatemala had acceded to the Convention, the death penalty had not applied to that crime.

17. Neither the Migration Act nor the Regulations made reference to expulsion, return ("refoulement") or deportation. It could however be concluded from paragraph 27, citing article 116 of the Migration Act, that prior to a decision to expel, the individual concerned had the possibility to be heard, to give evidence and to seek remedies. On the basis of article 46 of the Constitution, the obligatory force of article 3.1 of the Convention could be upheld for cases of expulsion or refoulement as well as for extradition. Nevertheless, the lack of any provisions explicitly obliging the authorities to assess whether there were substantial grounds for believing that the person would be in danger of being subjected to torture, left the application of that clause of the Convention to the free interpretation of the authorities concerned.

18. Regarding article 4 of the Convention, the report cited article 201 bis of the Penal Code (paras. 9 and 28), which defined torture as an offence and established its sentencing. That article had already been mentioned in the initial report of Guatemala. The Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH) had proposed an amendment, cited in paragraph 157, which had been under consideration by the Office of the Private Secretary to the President of the Republic for more than two years. The initiative for reform was attributed to the Committee's recommendation (para. 156) but its fate was uncertain. He therefore felt it was best to consider the defects in the existing text and then see whether the draft reform rectified them.

19. The Committee had previously criticized paragraph 3 of article 201 bis, which stated that "Anyone who commits the offence of torture shall also be tried for the offence of kidnapping". Although it had been omitted from the text in paragraph 9 of the report, it was repeated in the draft amendment. The apparent linking of torture to the crime of kidnapping was ambiguous. It could suggest that only within the context of kidnapping could torture be prosecuted by the law, and that torture was defined only as a secondary offence dependent on the act of kidnapping. Moreover, the act of torture alone could not justify sentencing for kidnapping without other elements of a criminal nature involved.

20. Article 201 bis stated that "The offence of torture is committed by anyone who, on orders from or with the authorization, support or acquiescence of the State authorities, intentionally inflicts pain or suffering, whether physical or mental, on another person". However, it excluded torture applied "directly" (i.e. on their own initiative) by agents or officials of the State. That was

tried under article 45 of the Penal Code, which was apparently applicable only when the victim was either a detainee or a prisoner, and for which the sentence was significantly lower than under article 201 bis. According to his sources, the charge of "torture" had been excluded in more than one case on the grounds that the victim had not been a detainee or a prisoner at the time. Could the delegation please clarify that point?

21. The second criticism by the Committee had been the exclusion from the definition of torture of "the consequences of action taken by a competent authority in the legitimate exercise of its duty and in order to safeguard public order", which went far beyond the exclusion foreseen in article 1.1 of the Convention namely "pain or suffering arising only from, inherent in or incidental to lawful sanctions". The text in the proposed amendment did not answer the Committee's criticisms.

22. Thirdly, acts based on discrimination of any kind, or on coercion, which were covered in article 1.1 of the Convention, were omitted under article 201 bis. Given the aim stated in paragraph 4 of the report of constructing a "multicultural, multi-ethnic and multilingual nation", the omission of the mention of discrimination seemed contradictory. There was always a margin for interpretation of criminal provisions, but they needed to be clear and unequivocal to avoid interpretations which could favour impunity. It was unfortunately not possible to look at the practical application that judges had made of article 201 bis, since paragraph 29 of the report simply stated that no sentences had been handed down for the offence of torture.

23. The proposed amendment to article 201 bis quoted in paragraph 157 of the report, overcame some of the above defects, but still retained inadequacies and ambiguities. "Direct" offences by public officials had been included, and the definition of the crime of torture had been extended to a public official who, when in a position to prevent torture did not do so, or who ordered, incited or induced a third person to commit torture. Nevertheless, the reform ought also to be related to article 425 of the Penal Code on abuses against individuals, removing the reference to "torture" (or replacing it with "cruel, inhuman or degrading treatment"), since if article 425 was maintained in its current form, any public official who ordered or carried out acts of torture against a "prisoner or detainee" would be sentenced not under article 201 bis, but under article 425. That would lead to the mental perpetrator of the crime (the one who ordered it) receiving a lesser sentence than the material perpetrator, who carried out the order

24. Furthermore, he regretted the exclusion of action taken by a competent authority "in the legitimate exercise of its duty and in order to safeguard public order" from the definition of torture. Acts of torture could be hidden behind a smoke screen of "public order". Moreover, the excessive use of force could also constitute "cruel, inhuman or degrading treatment".

25. With regard to article 8, the report stated that to date Guatemala had not requested or been subject to any request for extradition in connection with torture. It quoted provisions of the Code of Private International Law, ratified by 15 States of South and Central America and the Caribbean, and the Convention on Extradition (the Montevideo Convention) linking Guatemala with 11 other States. Both had much more limited application than the Convention on Torture, and both required that the acts for which extradition was requested constitute an offence in both the requesting and the requested State.

26. Guatemala had previously maintained a reservation on extradition, only supporting extradition of Guatemalan citizens in the case of crimes against human rights; however, Guatemala's reservation under its recent ratification of the Inter-American Convention on Forced Disappearance of Persons stated that it would not allow nor demand the extradition of Guatemalans for the crime of disappearance. In the absence of those reservations, extradition would be governed by international treaties, pursuant to articles 27 and 46 of the Constitution. He recommended introducing universal jurisdiction.

27. With reference to article 10, MINUGUA had since 1998 been working on a project to improve the penitentiary system, which included training courses for prison staff. Although it was not explicitly mentioned in the topics listed in paragraph 59, the course surely covered the prohibition of torture. The same project had supported the establishment of the Penitentiary System College, which had begun its activities in November 1999. As stated in the previous report, the National Civil Police Academy included the study of human rights instruments in its curriculum, details of which were given in the third periodic report by way of confirmation. He also noted that the publication and wide distribution of the document on"Human rights instruments in the administration of justice" complied with the provisions of article 10.2 of the Convention.

28. With regard to article 11, nothing in paragraphs 68 to 78 implied a systematic review of interrogation rules, instructions, methods and practices or arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, with a view to preventing any cases of torture, as prescribed in the Convention. Despite the general standards laid down in article 19 of the Constitution, concerning the aims and minimum rules for treatment in the penitentiary system, and the Regulations for Detention Centres contained in Government Order No. 975-84 systematic examinations should be conducted of the actual treatment meted out in such centres, and the adequacy of the legislation had to be reviewed in the light of the findings. He welcomed the creation of the Office of the Ombudsman for Prisoners and Due Process (para. 79), as part of the Office of the Human Rights Procurator, in 1998, and the creation in 1999 of a "commission to reform the Guatemalan penitentiary system" (para. 81). The protection of persons awaiting criminal trial or serving a sentence and the supervision of judicial and prison authorities, which formed part of the Ombudsman's mandate, were certainly areas where violations of human rights and due process often occurred.

29. Where articles 12 and 13 of the Convention were concerned, domestic legal provisions were generally adequate. Torture, as defined, was publicly actionable, which meant it should automatically be investigated by the Public Prosecutor's Office, even if no complaint was filed by the victim. The Public Prosecutor's Office was also responsible for undertaking legal action before the courts. According to the Constitution, everyone had free access to the courts and agencies of the State. Public officials apprised of a publicly actionable offence were obliged to report it, as were professionals confronted in the course of their work with offences against life or physical integrity. The witness protection scheme currently being developed needed additionally to protect claimants and witnesses from any ill-treatment and intimidation which might result from their decision to launch a complaint or to testify.

30. He felt, however, that there was a contrast between the quality of the legal norms and the reality of the situation. Despite the statement in paragraph 7 of the report that there had been a

considerable reduction in human rights violations such as torture, enforced disappearance and extrajudicial executions, which the report claimed had previously been due to the internal armed conflict, according to MINUGUA reports the situation was actually worse than at the time of the previous report. The four latest reports from MINUGUA, covering a period of three years from January 1997 to June 2000, showed that the annual average number of cases of torture had nearly doubled, from 12 to 21. Moreover, that was the number of cases, not the number of victims, which was higher since some cases involved several victims. It should also be remembered that the number of cases reported was always significantly lower than the real figure, since most victims were too afraid to lodge complaints. In its latest reports, MINUGUA attributed responsibility for violations to the National Police Service (PNC) and particularly to the Criminal Investigations Service (CIS). Its eleventh report stated that the acquiescence of police chiefs could lead to alarming extremes, and based that assertion on the description of three cases of serious torture, in which senior officers of the PNC and CIS had taken part or at which they had been present.

31. MINUGUA, Amnesty International and Human Rights Watch had all commented that impunity was a determinant factor in the situation regarding human rights abuses in Guatemala. And the weakness of the institutions charged with the investigation, prosecution and punishment of the crime of torture and the preservation of constitutional guarantees against it lay at the root of that impunity. The President of the Republic, in his inaugural speech, had stated that the transformation of the administration of justice and the fight against impunity were urgent priorities. It should be reiterated that both the judiciary and the Public Prosecutor's Office had serious areas of weakness and deficiencies. Those included the training of judges and personnel of the Public Prosecutor's Office. The modernization of the judiciary and the consensus in the National Congress on the appointment in 1999 of new members of the Supreme Court, who had been chosen mainly on the basis of a record of professional and moral integrity, had generally been welcomed by Guatemalan society as a positive development. It gave hope that the Supreme Court would be able to bring about the necessary changes in the judiciary system. The consolidation of the College of Legal Studies, which had already graduated its first intake of judges for courts of first instance, was also a positive development. They were the first judges in Guatemala to have received a six-month training programme prior to their selection, which gave hope for future improvement in the quality of judges and their decisions.

32. Mr. RASMUSSEN (Alternate Country Rapporteur) said that he was pleased to learn that the Government of Guatemala gave highest priority to implementing the December 1996 Peace Accords. He appreciated that the third periodic report had acknowledged that there were still areas and issues where no significant progress had been made in honouring the commitments contained in the Peace Accords (para. 6); however, it would be useful to have further details on what those areas were.

33. Beginning with implementation of article 10 of the Convention, he commended Guatemala for the progress made in providing training on the prohibition of torture. In that context, he drew attention to the importance of the procedure used for recruiting the police. It was not advisable to recruit police officers from the ranks of the military; soldiers were taught to shoot first and ask questions later, whereas the police must show greater restraint. In particular, it was necessary to avoid hiring persons with a bad record in the military, since they were clearly not suited for police work.

34. He welcomed the course on "Health in prisons", to which reference was made in the report (para. 63), and hoped that that was an ongoing process. Health in prison was an important human rights issue. Training should include making provision for prison doctors to record any injuries noted on the body of detainees upon their arrival in the prison, as well as allegations of how those injuries had been sustained, so as to help ascertain how they had occurred.

35. Regarding article 11, he agreed with the Country Rapporteur on the need for a systematic examination of interrogation rules and called upon Guatemala to publish information on its interrogation procedures and practice. He also drew attention to the importance of registers. Police stations kept a record of when persons arrived and when they were released, but did not always record what happened to them during their stay. He asked Guatemala to consider introducing a file, assuming it did not have one already, for every detainee, indicating at what time they were taken to interrogation, who conducted the interrogation, who was present and when it ended. That would also make it possible to establish whether detainees had been informed of their fundamental rights to consult a lawyer, contact their family and see a doctor.

36. In respect of article 12, he noted that the report referred to the Myrna Mack case (para. 145). He was surprised to read that criminal proceedings were still under way for the three officers accused of being behind her death. Surely that was not a prompt investigation. Were the three accused persons still in pre-trial detention after seven years?

37. A number of cases involving street children had been brought to the Committee's attention. The World Organization against Torture (OMCT) had reported the case of Lorena del Carmen Carraza and Nery Mateo H., both aged 15, who had been sexually abused in February 1999 in a park in Guatemala City by a policeman wearing the uniform of the Special Police Force. Later, staff members of Casa Alianza, part of OMCT's SOS-Torture Network, had shown the girls photos of members of the Guatemala National Police special forces, and they had recognized the perpetrator, police agent Moisés Che Ba. Another street girl had also allegedly been sexually abused by the same policeman in February 1999. Julio Arango Escobar, the ombudsman, had concluded that the human rights of the two girls had been violated by the said officer and that the public prosecutor responsible for bringing charges, Maura Estrada Mansilla de Perez, of the office of the Special Prosecutor of Crimes against Women, had been negligent in her handling of the case and had repeatedly failed to appear at court hearings, leading to long court delays. That was a clear example of failure to ensure a prompt investigation. Impunity for the police officers concerned would only lead to a repetition of such incidents.

38. Guatemala had done very little to ascertain the whereabouts of missing persons, many of whom had been tortured and then killed during the armed conflict, or to bring the accused to justice, and had done nothing whatsoever to compensate the families concerned. He cited the case of Adriana Portillo. Her parents, a sister and two daughters, 10 and 9 years old at the time, had been kidnapped by Guatemalan Government security forces in 1981. Ms. Portillo had suffered terrible mental anguish ever since. Since 1997, she had returned to Guatemala 12 times to look for her two daughters. The Historical Clarification Commission had called for the establishment of an independent body to ascertain the fate of all those who had disappeared during the conflict and carry out the exhumation of mass graves. To investigate cases of missing

persons, there must be speedy access to military records, and it must be possible to question soldiers allegedly implicated in disappearances; a commission must be mandated to examine such cases in depth.

39. With regard to article 14, he drew attention to the three Ms of redress, namely moral, monetary and medical compensation. In that connection, paragraph 109 reported that to date, State statistics indicated no cases of compensation being paid for incidents of torture. Yet the Peace Accords called for compensation and/or assistance to the victims of human rights violations. He hoped that the next report would provide information on such compensation.

40. Turning to article 15 of the Convention, he said that articles 85 and 183 of the Code of Criminal Procedure (paras. 110-1) were meaningless if they were not promptly implemented.

41. Regarding article 16 of the Convention, he said that police and prison matters should be dealt with separately, and he sought the opinion of the Guatemalan delegation on that subject. Overcrowding was a problem, particularly in pre-trial detention. He noted that the ombudsman had received only 20 complaints in nine months (para. 80); given the huge prison population in Guatemala, that was a small figure, and he wondered how the complaints system was organized. Did inmates have ready access to the ombudsman? There might be a need to revise the complaints procedure. Did the ombudsman conduct visits to prisons, and could inmates give the ombudsman complaints in a sealed envelop to ensure that they were not censured?

42. It was usually preferable to reduce the prison population rather than build new facilities, but the project for the construction of 12 prisons (para. 56) was justified if its purpose was to enable inmates to be closer to their families. Concerning maximum security prisons (para. 83), he was not certain that the fact that all prisoners had individual cells was an improvement if it meant that they were kept isolated in their separate cells without access to outdoor exercise; he sought further information about the regulations in such maximum security cells: did prisoners have the right to attend classes every day? How much outdoor exercise were they allowed? What were their rights regarding mail and family visits?

43. In closing, he said that he was pleased to learn (para. 158) that Guatemala was considering making the declaration under article 22 of the Convention.

44. Ms. GAER expressed her appreciation to Guatemala for its cooperation with the Committee and commended the delegation for its impressive report, which had addressed many of the questions raised earlier by the Committee; she welcomed in particular its presentation of statistical information on female prisoners.

45. Noting that female prisoners were held separately from males, she asked whether there were male guards and whether the female facility was a separate prison or merely a section within a male prison.

46. Expressing appreciation of the information provided in paragraph 85 of the report concerning prisoner rehabilitation measures and the provision of courses for prisoners on sexually transmitted diseases, she asked whether there were arrangements for monitoring sexual violence in prisons, both between inmates and the prison authorities and among inmates.

47. Referring to paragraph 19 (a) of the Constitution cited in paragraph 68 of the report, she said that, in the Committee's experience, where a single group of prisoners was commonly the target of discrimination, persons in authority were psychologically more inclined to subject them to cruel and inhuman treatment and torture. In that connection, she asked whether prison records contained statistical breakdowns in terms of ethnicity, indigenous background or membership of other racial minorities. Were there separate figures for persons classified as juveniles or aliens and for gay and lesbian prisoners?

48. The CHAIRMAN said that article 425 of the Criminal Code, cited in paragraph 10 of the report, seemed to imply that torture was authorized by law under certain circumstances. As the defence of necessity was ruled out by the Convention, which had been incorporated in Guatemalan domestic law, he could not conceive of any situation in which torture could be permissible under law. He would welcome any clarification the delegation could provide.

49. Amnesty International, in its briefing to the Committee, had sought to expand the definition of torture to include the families of the "disappeared". He asked the delegation whether it agreed with the broader definition.

50. According to the World Organization against Torture, another non-governmental organization, the Historical Clarification Commission had concluded that 93 per cent of the abuses committed during the civil war were attributable to the security forces. He asked how many of those abuses had been investigated and prosecuted, and how many of the perpetrators had been disciplined or purged from the armed forces, the police or the security forces. He also wished to know whether any amnesty laws applying to the civil war period had been enacted in Guatemala.

51. As that completed the questions that the Committee wished to raise, he invited the delegation to return the following day with their responses.

52. Mr. GODOY MORALES (Guatemala) said that the delegation had taken careful note of the questions and would endeavour to respond as comprehensively as possible.

The public part of the meeting rose at 12.05 p.m.